United States Court of Appeals

for the Second Circuit

APPENDIX

Mrs. Morrison, also a teller at the bank on the

ORIGINAL + proof of service

74-1938

B
Pgs
7cc

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

UNITED STATES OF AMERICA, :

-against- :

74-1938

MORRIS HALL, :

Appellant. :

----------x

APPELLANT'S APPENDIX

JESSE BERMAN
Attorney for Appellant
351 Broadway
New York, New York 10013
[212] 431-4600

3

under good lighting conditions.

PAGINATION AS IN ORIGINAL COPY

youthful black men, many of whom bear a resemblance to the

TABLE OF CONTENTS

INDICTMENT
(73 Cr. 802)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

-v- : INDICTMENT

MORRIS L. HALL, : 73 Cr. 802

Defendant. :

- x

The Grand Jury charges:

On or about the 25th day of January, 1973, in the Southern District of New York, MORRIS L. HALL, the defendant, unlawfully, wilfully and knowingly, did, by force, violence, and intimidation, take from the person and presence of another money, to wit, approximately $21,000.00, belonging to, and in the care, custody, control, management and possession of, the Security National Bank, 1121 Madison Avenue, New York, New York, a bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a).)

FOREMAN

PAUL J. CURRAN
United States Attorney

DOCKET ENTRIES

D. C. Form No. 100
CRIMINAL DOCKET

JUDGE STEWART

73 CRIM. 802

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.: 264-6420 Jed S. Rakoff
vs.	
MORRIS L. HALL 7-3-74	
	For Defendant: JESSE BERMAN

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
~~Witness~~ Ti.18:2113(a)					
Bank Robbery by force & violence(ct.1)					
ONE COUNT					

DATE	PROCEEDINGS
8-17-73	Filed Indictment.
9-7-73	Filed AFFIDAVIT FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM.
9-17-73	Deft. produced on a writ and without attorney(Legal Aid Society assigned) Pleads not guilty. Motions returnable in 10 days. Writ adjourned to 10/1/73 Case assigned to Judge Stewart for all pruposes. Duffy,J.
9-17-73	Diled copy of deft's financial affidavit.
Oct-5-73	Filed Governments notice of readiness for trial.
Oct-9-73	Filed Governments (2nd) notice of readiness for trial.

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
Oct-19-73	Filed Governments affdvt. for a writ of H/C - writ issued - ret. 10-24-73		
Oct.2-73	Filed defts.motion for an order suppressing all statements made by defts,etc. ret. on: Dec. 10,1973.		
Oct.29-73	Filed W/H/C--writ satisfied on Oct. 24,1973 Stewart, J.		
Nov.13-73	HALL--Filed govts. affdt.of Jed S. Rakoff in opposition to motion to suppress.		
Nov.30-73	HALL-Filed Notice of Motion to adjourn the trial and assign new counsel, returnable 12/10/73		
Dec.6-73	Filed Affidavit for Writ of Habeas Corpus ad Prosequendum--Writ Issued ret.12/10/73		
Jan.14-74	Filed Order and Affidavit in support of Covt's motion for the Marshals to use all necessary force required to bring the deft. before this Court for the proceedings in this case. — Stewart, J.		
Jan.18-74	Deft. (atty. present) assigned counsel pursuant to C.J.A. Stewart, J.		
Jan.28-74	Filed Deft's Request on Voir Dire		
Jan.28-74	Filed transcript of record of proceedings, dated 10-24-74		
Jan.28-74	Filed transcript of record of proceedings, dated 12-11-74 MORRIS HALL -/		
Jan.30-74	Filed CJA-21 -Authorization for minutes of suppression hearing — Stewart, J. MORRIS HALL/		
Jan.30-74	Filed CJA 21 - Approving payment to Ralph Addonizio, Licensed Investigator.		
Jan.25-74	Suppression Hearing begun.		
Jan.28-74	Suppression Hearing cont'd. and concluded - Decision Reserved - Stewart, J.		
Jan.21-74	Filed CJA 20 - Authorization to pay defense counsel Jesse Berman,351 Bway,N.Y. - Stewart, J. (Original ~~fit~~ mailed to A.O,Wash.D.C.)		
Feb.4-74	Filed CJA 21 Authorizing payment to Court Reports for Transcript - Stewart, J. (original mailed to A.O.Wash.D.C.)		
Feb.6-74	Filed CJA 21 Authorization approving payment to Beverly Vicek, Court Reporter for Transcri Stewart, J. (original mailed to AO Wash.D.C.		
Feb.11-74	Filed the following documents from Mag. Raby — Docket Entry Sheet: Criminal Complaint: Magistrate's Warrant of Arrest: Appointment of Counsel.		
Feb.14-74	Filed CJA 21 Authorization for licensed investigator - Stewart, J.(orig.mailed toA.O.Wash		

DATE	PROCEEDINGS
Feb.20-74	Filed CJA Authorizing Payment of Transcripts proceedings to S.D.N.Y.Court Reporters (original mailed to A.O.Wash.D.C.) - Stewart,J.
Feb.13-74	Defts. Motion to suppress denied - Stewart,J.
Feb.13-74	Jury Trial begun before Stewart,J.
Feb.14-74	Trial Continued
Feb.15-74	Trial Continued
Feb.19-74	Trial Continued
Feb.20-74	Trial Continued
Feb 21-74	Trial Continued concluded. Jury finds Deft. GUILTY as charged. Sent. adjourned to 3/22/74 - P S.I.Ordered. Deft. Remanded. - Stewart,J.
Feb.27-74	MORRIS HALL- Filed CJA 21 Authorization for Transcript - Stewart,J.
Mar.1-74	Filed Affidavit in Oppsition to Motion to Adjourn trial and to assign new counsel.
Mar.1-74	Filed MEMORANDUM #40412 - The deft. made sereral motions to suppress evidence on which pre-trial hearings were conducted outside the presence of a jury. For the purpose of these suppression motions, this Court make the following findings of fact and conclusions of Law: 1) Pre-Arrest photographic identifications--Deft's motion to suppress Mrs.O'Rourke's and Mrs. Morrison identification testimony as to the identity of the robber is denied. 2) Seizure of a gun by N.Y.C.police and deft's post arrest statement to the police--Since the deft. constitutional protections against unreasonable searches and seizures were not violated, the gun is admissible in evidence against him. Deft's motion to suppress his post arrest statement is also denied. 3) Statement to N.Y.C. police - Denied 4) Statement to F.B.I.agents on 5/31/73 - Denied - So ordered Stewart,J.
Mar.1-74	Filed Government's Memorandum of Law in connection with suppression Hearing
Mar.1-74	Filed Deft's Memorandum of Law in support of his motion to suppress
Mar.1-74	Filed Government's Post hearing Memorandum in Opposition to Deft's Motion to Suppress
Mar.1-74	Filed Govt's Requested Voir Dire questions of prospective Jurors
Mar.1-74	Filed Govt. Requests to charge.
Mar.1-74	Filed Govt's Supplemental Requests to Charge.
Mar.1-74	Filed Govt. Supplement Request.
Mar.1-74	Filed Deft's requests to charge.
Mar14-74	Filed Affdvt. for Writ of Habeas Corpus AD Prosequendum
3-18-74	Deft. (atty.present) produced on Writ. Produced Sentenced Pursuant to Sec.4208(b) of Title 18 USC for Study, Report and Recommendations (See Judgment) Stewart,J.

DATE	PROCEEDINGS
3-18-74	Filed JUDGMENT (atty present)It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative pursuant to Section 4208(b) of Title 18, U.S.Code for study, report and recommendations as described in Section 4208(c). This commitment deemed to be for the maximum sentence prescribed by law, to wit: TWENTY (20) YEARS UNLESS altered by this Court pursuant to said section upon receipt of the report and recommandations. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case shall be furnished to the Court within THREE (3) MONTHS. STEWART,J. (copies issued)
3-21-74	Filed CJA 21 Authorization of Transcript - Stewart, J.
3-20-74	HALL - Writ Satisfied. - Carter,J.
Apr-4-74	HALL - Filed CJA 21 Requesting Transcript S.D.Court Reporters - Stewart,J.
4-3-74	Filed commitment with endorsed return, Deft. delivered to Fed Det Hdq NY 3-26-74
5-20-74	Filed CJA 21 Authorization of Transcript of S.D.Court Reporters U.S.Courthouse, (original mailed to AO Wash.D.C.) - STEWART,J.
6-18-74	Filed Transcript of record of proceedings, dated 2-13-74
6-18-74	Filed Transcript of record of proceedings, dated 2-14-74
6-18-74	Filed Transcript of record of proceedings, dated 2-15-74
6-18-74	Filed Transcript of record of proceedings, dated 2-19-74
6-18-74	Filed Transcript of record of proceedings, dated 2-19-74
6-18-74	Filed Transcript of record of proceedings, dated 1-25-74
6-18-74	Filed Transcript of record of proceedings, dated 1-28-74
7- 3-74	MORRIS L. HALL- Filed JUDGMENT that the defendant is guilty as charged and convicted and having on March 18, 1974 been committed to the custody of the Attorney General or his authorized representative pursuant to Title 18, United States Code, Section 4208(c) United Sates Code and the Court having now received and considered the report of such study, it is ordered ad adjudged that the defendant is sentenced for a period of FIFTEEN (15) YEARS. The defendant is to be given credit for the time served. It is also recommended that the Government will also provide for a period of Community Supervision after his release . -- Stewart, J. (copies issued
Jul- 3-74	Filed defendants notice of appeal to the USCA for the 2nd Circuit from judgment of 7-3-74 - copy mailed to deft. and copy mailed to US Atty.
7-12-74	Filed Transcript of record of proceedings, dated
7-16-74	Hall Filed Transcript of record of proceedings, dated June 16, 1974
7-17-74	Filed Transcript of record of proceedings, dated 3-18-74
	Filed Transcript of record of proceedings, dated 7-3-74
7-23-74	Filed Original record on appeal transmitted to U.S.C.A. this date.

8-6-74 Filed C.J.A/ copy #5- authorization to pay S.D. Court Reporters - Stewart,

FS

U.S.A. V. MORRIS HALL - STEWART,J.

DATE	PROCEEDINGS
9-5-74	Filed CJA 21 Authorization of transcript - orgiinal mailed to AO Wash,DC for payment - STEWART,J.
10-30-74	Filed CJA 20 Copy 2 Appointing Jesse Berman atty., 351 Bway. N.Y. original mailed to AO Wash.D.C. for payment - Stewart.J.

D. C. 109 Criminal Continuation Sheet

MEMORANDUM OPINION ON SUPPRESSION MOTION

M-134

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MORRIS L. HALL,

Defendant.

#40412

73 Crim. 802

MEMORANDUM

STEWART, DISTRICT JUDGE:

The defendant, Morris Hall, was indicted for bank robbery, for allegedly forcefully taking a sum of money from the Security National Bank, 1121 Madison Avenue, New York City on January 25, 1973. The defendant made several motions to suppress evidence on which pre-trial hearings were conducted outside the presence of a jury. For the purpose of these suppression motions, this Court makes the following findings of fact and conclusions of law:

I. Pre-arrest photographic identifications.

Following the robbery, New York City police and the Federal Bureau of Investigation interviewed bank employees who were eye witnesses to the robbery, and displayed to them several photographic spreads. Three eye witnesses, Mrs. O'Rourke, Mrs. Morrison and Mr. Sullivan testified at the suppression hearings.

Mrs. O'Rourke was the head teller at the Security National Bank on the day of the robbery and the person from

whom the robber took the money. She observed the robber face-to-face for a period of two or three minutes under good lighting conditions. The robber wore no mask nor disguise.

Later on the day of the robbery Mrs. O'Rourke was shown "hundreds" of photographs by the New York City police from which she did not pick out the robber.

Subsequently Mrs. O'Rourke met twice with investigators from the F.B.I. On January 31, 1973 she was shown a booklet containing twenty-five to thirty bank surveillance photographs of black bank robbery suspects.[1/] (Government's Ex. 8). Mrs. O'Rourke did identify one photograph as depicting someone who looked "most like" the man who robbed her bank on January 25. In April of 1973, Mrs. O'Rourke was shown seven "mug shot" photographs by F.B.I. agents (Government's Exhibits 1-7). Each photograph contained a front and side view of a young black man in street clothes. From this spread, Mrs. O'Rourke picked two photos, both of which depicted persons she thought looked like the robber.

1/ The booklet shown to the eye witnesses at the hearing was, apparently out of necessity, not precisely the same booklet previously shown to those witnesses by the F.B.I. The F.B.I. maintains a booklet of such photos on a revolving basis, adding new suspects and deleting suspects, apparently after the particular bank robbery case depicted in the surveillance photos has been resolved. The booklet shown to Mrs. O'Rourke and Mrs. Morrison (infra) at the hearing contained many, but not all, of the same pictures as the booklet shown to them on January 31, including the picture they had previously identified as depicting the robber.
The defendant is a twenty-nine year old black man.

Mrs. Morrison, also a teller at the bank on the day of the robbery, first observed the man who was to rob the bank pacing back and forth outside the bank for about five minutes. Subsequently she observed him in the bank, as he was effecting the robbery, for about seven minutes under good lighting conditions.

Like Mrs. O'Rourke, Mrs. Morrison was shown by the F.B.I. the booklet of twenty-five to thirty black bank robbery suspects on January 31, 1973 and the spread of seven black males in April, 1973. In January, Mrs. Morrison identified one picture as depicting the robber (the same one identified on that date by Mrs. O'Rourke) and in April she also identified one of the seven mug shots as depicting the robber (one of the two picked out at that time by Mrs. O'Rourke). At no time while presenting these photographs to Mrs. O'Rourke or Mrs. Morrison prior to their making the identifications, did the agents suggest that they were interested in an identification of any particular person.[2/]

Mr. Sullivan was a bank guard at the Security National Bank on the day of the robbery. During the robbery, the robber managed to take Mr. Sullivan's gun from him, and use it to complete the robbery. Mr. Sullivan therefore had an opportunity to view the robber at close quarters for two or three minutes

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2/ The agents may have indicated tacit pleasure at Mrs. Morrison's April identification, but such indication clearly came after Mrs. Morrison made that identification.

under good lighting conditions.

Mr. Sullivan testified that he had, on two occasions, been shown photographs by the F.B.I., but that on neither occasion had he been shown a booklet of photographs similar to Government's Exhibit 8. Rather, he was shown "seven pictures ... on one sheet of paper." But he also testified that he had not been shown the seven photographs which constitute Government's Exhibits 1-7. Counsel for the government adduced testimony that Mr. Sullivan did previously identify a photograph which is contained in Government's Exhibit 8, as depicting a man Mr. Sullivan thought looked like the robber, but the testimony leaves unclear the spread from which that identification was made.

The defendant seeks to preclude these eye witnesses from making any in-court identification of the defendant on the ground that the pre-arrest identifications may have been impermissibly suggestive so as to give rise to a substantial likelihood of misidentification at trial.

In deciding this question, the Court must evaluate the totality of the circumstances. Simmons v. United States, 390 U.S. 377 (1968). With respect to Mrs. O'Rourke and Mrs. Morrison, it is clear that none of the photographs shown to them by the F.B.I. were tainted by any impermissible suggestion. On the occasions of their discussions with F.B.I. investigators, they were each time shown seven or more photographs of

youthful black men, many of whom bear a resemblance to the defendant. Where the defendant's photograph was included in a spread, there was nothing on the picture itself or in the manner of presentation which would have tended to single him out. Mrs. O'Rourke's rather indecisive identifications, while they may reflect on the credibility of any in-court identification she would make, buttress our finding that the photographs and the manner of their presentation to her and Mrs. Morrison were in no way suggestive.

As to the "hundreds" of photographs shown to Mrs. O'Rourke by the New York City police on the day of the robbery, her failure to make any identification of the robber from among them, while it may raise questions under Brady v. Maryland, 373 U.S. 83 (1963) (i.e., if a photograph of the defendant was in fact among those shown), makes it unlikely that the procedure was suggestive, and virtually impossible that such procedure would result in a "substantial likelihood of misidentification." United States v. Evans, 484 F.2d 1178, 1184 (2d Cir. 1973)

Defendant's motion to suppress Mrs. O'Rourke's and Mrs. Morrison's identification testimony as to the identity of the robber is denied.

Mr. Sullivan's identification testimony is another matter. His pre-trial testimony fails to reveal the photographic spreads from which he was able to pick out a photograph

which he believed to depict the robber, or their method of presentation. Since we cannot discern how Mr. Sullivan made his identification, we cannot decide whether or not such procedure was unduly suggestive or if so, if it would result in a substantial likelihood of misidentification at trial.

As between the parties, the government has the only access to the information we seek. Therefore, we must grant the defendant's motion to suppress Mr. Sullivan's testimony as to any in-court identification of the robber.[3/]

II. Seizure of a gun by New York City police and defendant's post-arrest statement to the police.

On April 13, 1973 at midday, several New York City policemen were approached, while eating breakfast in a luncheonette on West 125th Street in Manhattan, by one Arthur Dancy.[4/] Mr. Dancy informed the police that the man behind them, who was the defendant Morris Hall, had a gun, and that he was "bothering" Dancy. Two of the policemen, Detective D'Alba and

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3/ In announcing its decision from the bench prior to trial, this Court gave the government the opportunity to come forward with further testimony as to Mr. Sullivan's pre-trial identifications. The government chose not to avail themselves of this opportunity.

4/ Arthur Dancy was not a paid government informant. There is no indication in the record that the New York City police had any prior dealings with Mr. Dancy.

Officer Vosges[5] approached the defendant from either side. Officer Vosges asked the defendant whether he had any identification and whether he was carrying a gun. When the defendant gave no response, the officers grabbed his arms, and Detective Vosges patted down his outer clothing. Upon feeling a bulge at the defendant's waistband,[6] Detective Vosges opened the defendant's coat and removed from his waistband a .38 caliber Smith and Wesson revolver.[7]

The defendant was thereafter arrested for, inter alia,[8] menacing and possession of a dangerous weapon. He was brought to the police station where Officer Steffen, one of the policemen present at the arrest, advised him of his constitutional rights by reading to him from a form. The defendant was advised of his right to be or remain silent at any time, his right to have an attorney present during questioning, and his right to have an attorney provided for him if he could

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5/ Officer Vosges was the only government witness on this issue at the suppression hearing. Where his testimony conflicts with that of the defendant, we resolve the question of credibility in favor of Officer Vosges.

6/ There was a good deal of conflicting testimony at the hearing concerning whether or not Officer Vosges saw a bulge at the defendant's waistband prior to feeling the bulge. The testimony in its totality and simple logic compel the conclusion that the pat down occurred so rapidly that the viewing and feeling of the bulge at the defendant's waistband must have occurred simultaneously.

7/ This gun was later revealed to be the gun taken from bank guard Sullivan during the January 25 robbery of the Security National Bank.

8/ New York Penal Law §§120.15, 265.05 (McKinney 1967).

not afford one. He was also advised that anything he said could be used against him in court.

The defendant stated that he understood the rights of which he had been advised. Thereafter, Officer Steffen asked the defendant where he had gotten the gun, to which he responded,"I bought the gun for fifty dollars in the street."

The defendant seeks to suppress the gun seized and the allegedly false exculpatory statement taken from the defendant on April 13, 1973 by the New York City police on the grounds that the defendant's constitutional rights were violated in each instance.

Defendant's motion to suppress the gun is denied. At the time they patted down his outer clothing, the police may not have had probable cause to arrest the defendant nor to conduct a full-scale search of him. Warden v. Hayden, 387 U.S. 294 (1967); Draper v. United States, 358 U.S. 307 (1959). However, the police did neither of these things; rather, they conducted the type of limited search for weapons approved by the Supreme Court in situations where the police have reason to fear for their safety. Adams v. Williams, 407 U.S. 143 (1971); Terry v. Ohio, 392 U.S. 1 (1968). In Adams the Court indicated that there was no hard-and-fast rule requiring, for example, the policeman's fear to result solely from what he observed, but rather a court could consider all the circumstances surrounding each occurrence, and determine whether a

policeman's response to a particular situation was reasonable or not.[9] 407 U.S. at 147-148.

In this case, we find the officers' response to the situation to have been reasonable. Upon advice from a complaining witness that the defendant was armed and "bothering" him, the officers approached the defendant. Under the circumstances, the defendant's failure to respond to their initial questions concerning his identity and possession of a gun, may reasonably have been viewed as suspicious conduct, tending to corroborate the complaining witness. We find that these facts fall within the "lenient" test in Adams for an investigatory stop and frisk for weapons. United States v. Santana, 485 F.2d 365 (2d Cir. 1973). Once this "intermediate response" uncovered the weapon, the police had probable cause to arrest the defendant, and seize the gun. Since the defendant's constitutional protections against unreasonable searches and seizures were not violated, the gun is admissible in evidence against him.[10]

9/ We emphasize that such a flexible approach is applied in this case only to a limited protective pat down or frisk for weapons:

> "The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." Terry v. Ohio, supra at 29.

10/ Our disposition of this motion makes it unnecessary to rule on the government's argument that the state court suppression determination operates to collaterally estop the defendant from re-litigating the issue in federal court.

Defendant's motion to suppress his post-arrest statement of April 13 is also denied.

First, since we find the seizure of the gun to have been accomplished within constitutional bounds, the subsequent statement is not a "fruit" of official illegality of the type condemned in Wong Sun v. United States, 371 U.S. 471 (1963).

Second, we find the defendant's statement to have been given by him voluntarily and following a complete recitation and understanding of his constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966).

Defendant argues that his lack of formal education plus his "mental condition" negated or made unlikely the possibility of a knowing and intelligent waiver of his rights. We disagree. Defendant's only psychiatric evidence submitted at the hearing was a 1971 report from Matteawan State Hospital which indicated recovery from a psychotic episode. That same report indicated that the defendant "shows at least average normal intelligence." There was no evidence introduced of any mental or psychiatric infirmity in or about the Spring of 1973.[11/] While evidence of his past psychiatric history might be admissible at trial as one factor in the jury's determination of the probative value of his statements, we cannot

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11/ From our observation of the defendant on the witness stand at the hearing, we find that he understood the questions posed and was totally responsive and lucid.

say that such scant history negates the knowing and intelligent waiver of his rights which the defendant made prior to his April 13, 1973 statement to the New York City police.

This discussion of the defendant's ability to knowingly and intelligently waive his rights applies equally to his May 31, 1973 statement to federal authorities (infra).

III. Defendant's confession to the Federal Bureau of Investigation.

On May 31, 1973, F.B.I. agents Murphy and Cotton interviewed the defendant in the New York City correctional facility at Rikers Island concerning the January 25 bank robbery. At that time the defendant had several pending state charges, including a charge for possession of a dangerous weapon for which he was arrested on April 13. He had not yet been indicted for the January 25 bank robbery, but a complaint and detainer had been filed against him with the United States Magistrate on that charge.

Prior to interviewing the defendant the agents were required by the Rikers Island authorities to get the defendant's signed consent to be interviewed. Upon meeting the defendant and identifying themselves, the agents advised the defendant of his constitutional right to be or remain silent at any time, his right to have an attorney present during questioning, and the right to have an attorney appointed

if he could not afford one, as well as the fact that anything the defendant said could be used against him in court. After so advising the defendant orally, the agents gave him a form which contained in writing all of these rights and warnings, and a statement indicating that he understood and voluntarily waived those rights. The defendant signed that form and thereafter answered the agent's questions. From the answers to those questions, Agent Murphy wrote out a narrative, which he subsequently asked the defendant to sign. The defendant was unwilling to sign the statement.

The defendant seeks to suppress testimony from the agents concerning the statement made to them on May 31 at Rikers Island.

First, the defendant argues, as with the April 13 statement to the city police, his lack of formal education and his mental condition negated or made unlikely the possibility of a knowing and intelligent waiver of his rights. For the reasons discussed in Point II supra, as a matter of law, we find no merit in this argument.

Alternatively, the defendant strenuously argues that, since he was incarcerated at the time on a related state charge (the weapon charge) and the agents knew this, they were obliged under Massiah v. United States, 377 U.S. 201 (1964), to seek out his state-appointed attorney prior to questioning. Defendant also argues that the issuance of a

federal complaint and detainer made even more imperative that the agents seek out the defendant's attorney prior to questioning, although he had yet to be indicted or had counsel appointed in the federal case.

We find Massiah impertinent to the facts of this case. That case involved an indicted defendant, already represented by counsel, who was deceived into making admissions to a government informant posing as a confederate. This Circuit has, on several recent occasions, refused to extend Massiah to cover situations where the defendant has yet to be indicted on the federal charge. United States v. Masullo, ____ F.2d ____(73-1733, 2d Cir., Nov. 26, 1973) slip op. 509, 515-519; United States v. Ramirez, 482 F.2d 807, 815 (2d Cir. 1973) or even to post-indictment situations where the defendant is not deceived nor coerced, but rather given complete Miranda warnings. United States v. Barone, 467 F.2d 247, 249 (2d Cir. 1972). Nor need federal agents limit their questioning to cases unrelated to that for which the subject has been arrested or indicted. United States v. Ramirez, supra; United States v. Barone, supra.

Defendant would have us conclude that a defendant who has been given full and complete Miranda warnings, as we find this defendant was, cannot voluntarily waive his rights, as this defendant did, without his counsel present once he has been either incarcerated on a state charge, or while so

incarcerated had a federal complaint or detainer lodged against him. No prior case stands for this proposition,[12/] certainly not Massiah; and several hold to the contrary. We decline to reverse the tide in this case, where to do so would be either to have required the F.B.I. to search out the correct one of defendant's several state-appointed counsel, none of whom were previously known to them, or to have required the federal authorities to immediately indict, arraign and appoint counsel for the defendant on the federal charge and to then have the F.B.I. inform such counsel prior to questioning the defendant.

Since we find that the defendant was fully informed of his rights and voluntarily waived them prior to his May 31 statement to the F.B.I. agents, testimony concerning that statement is admissible at trial. Defendant's motion to suppress such testimony is denied.

Summary

Motion to suppress:

1. In-court identification of robber by:

   Mrs. O'Rourke: DENIED

   Mrs. Morrison: DENIED

   Mr. Sullivan: GRANTED

2. Gun seized from the defendant by New York City police on April 13, 1973: DENIED

12/ United States ex rel. Lopez v. Zelker, 344 F. Supp 1050 (S.D.N.Y. 1972) relies heavily on the prior issuance of an indictment and the questionable nature of the warnings and subsequent "waiver."

COURT'S CHARGE TO JURY
(Trial Transcript, pp. 459-479, 488-489)

I think. All right.

The reason why I want to raise it right now is, if we are going to have it sent in, it has to be arranged for right now, so you can't have any second thoughts about this.

We are now at the point where I am going to tell you what the law is. I want you to pay, as usual, close attention.

Obviously, it goes without saying, but needs to be repeated, you must perform your final duty of deciding what the facts are in an attitude of complete fairness and impartiality. You must appraise the evidence which you have heard and seen carefully and deliberately and without the slightest trace of simpathy, bias or prejudice for or against the government on the one hand or the defendant on the other hand.

Let me remind you that the fact that the government is a party to this law suit, that this law suit is brought in the name of the United States of America, that fact does not entitle the government to any greater consideration than that accorded to any other party. And, by the same token, it is entitled to no less consideration.

All parties, government, corporations, individuals alike, are entitled to the same consideration. They all

stand here in Court equal in so far as determining justice is concerned.

As I told you at the outset, your function now will be to decide the facts. You are the sole deciders of the facts. You pass upon the weight of the evidence. It is your job to determine the credibility of the witnesses. You are to resolve any conflicts which may exist in the evidence.

You are to draw whatever inferences may be drawn from the evidence.

Anything that I have said, anything that the lawyers have said with respect to the evidence is not to be taken into account by you in determining what the facts are. It is your own recollection of what you heard and of what you have seen that governs.

Any rulings that I have made on objections during the course of the trial are legal matters which should not be in your minds when you are deciding what the facts are. The lawyers obviously have not only the right but duty to make objections, and whatever rulings I have made were based on the law and not because I had a view of the facts, not because there was anything in the facts which influenced me. I dealt only with the legal issues, so the rulings I have made are not for you to consider.

I am sure this goes without saying, but I again

will state it just to make sure it is in your minds.

Obviously, the personalities of counsel, and my own personality, should make no difference to you whatsoever. Your job is to decide what are the facts. Anything that interferes with your function as fact finders you should put aside.

I have also already mentioned to you the fact that the indictment in itself is not evidence of anything. It is just a charge. It does not have any bearing on the question of whether or not the defendant is guilty. You must give no weight whatsoever to the fact that an indictment has been returned by a grand jury against the defendant.

If you want to see a copy of the indictment, you may request one.

Incidentally, Madam Forelady, if you have any questions for me please put them in writing, give them to the marshal, and I will act on them.

The defendant, Morris Hall, has been charged in the indictment with violating a section of the criminal laws of the United States. Actually, it is Title 18, United States Code Section 2113(a), which reads, in relevant part, as follows:

"Whoever, by force or by intimidation, attempts to take from the person or presence of another any property or money or any other thing of value belonging to or in the

his opinion. You may weigh his reasons, if any, and give

care, custody, control, management, or possession of any bank, is guilty of a crime."

The charge here in the indictment is as follows. It is very short, and I will read it all to you:

"On or about the 25th day of January, 1973, in the Southern District of New York, Morris L. Hall, the defendant, unlawfully, wilfully, and knowingly, did, by force, violence, and intimidation, take from the person and presence of another money, to wit, approximately $21,000, belonging to, and in the care, custody, control, management and possession of, the Security National Bank, 1121 Madison Avenue, New York, New York, a bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation."

Then the indictment refers to the section of the United States Code which I have just mentioned.

You will notice that the indictment uses pretty much the same language as the statute which I read to you first. You may have noticed, however, that the statute speaks in terms of a taking by force or by intimidation. The indictment says that the defendant by force, violence and intimidation took money.

The law is, and I instruct you accordingly, that the statute controls, and that in order to convict the defendant of bank robbery you need not find that he used both

force and intimidation, but only that he used one or the other.

If you find, for example, that he used intimidation only, that is sufficient to meet the statutory requirement, even if he did not use force.

To find Mr. Hall guilty you must find each of the following three elements as facts, and, of course, beyond a reasonable doubt. And I will tell you what I mean by a reasonable doubt in just a moment.

The three elements are:

First, that on or about January 25, 1973, the Security National Bank, 1121 Madison Avenue, New York, New York, was a bank the deposits of which were insured by the Federal Deposit Insurance Corporation.

Secondly, that on or about that date the defendant, Mr. Hall, took from someone else money which belonged to or was in the care, custody, control, management or possession of that bank, and that he did so wilfully and knowingly.

Thirdly, that this taking of money was the taking by force or by intimidation from the person or presence of someone other than the defendant, Mr. Hall.

I think most of the terms of these three elements are simple enough and require no elaboration. One may puzzle you, and that is the reference in the first element to the

fact that the deposits of the bank were insured by the Federal Deposit Insurance Corporation. That is a jurisdictional requirement. You will remember that the government and the defendant entered into a stipulation agreeing that at the time of the alleged robbery, January 25, 1973, the branch of the Security National Bank in question, the branch at 1121 Madison Avenue, was a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

It is not necessary that the government prove that the defendant, Mr. Hall, knew that it was so insured. It is just necessary that the government prove beyond a reasonable doubt that it was so insured. You may take into account, of course, this stipulation agreed to by counsel for both parties that it was so insured in determining, as you must, the facts with respect to that question.

As to the other two elements, I think perhaps I might say a word about intimidation. Intimidation may be established by proof of circumstances that are normally and reasonably calculated to arouse fear in the ordinary, the average, human being. So if it happens that some extraordinarily timid person was put in fear by some words or actions, that would not normally frighten anyone, this is not what is meant by intimidation.

On the other hand, if the proof shows that conduct

by a defendant would normally be expected to generate fear, then it is not necessary that those so affected would actually have experienced panic.

The question, in short, is whether the government has sustained its burden of showing beyond a reasonable doubt conduct of Mr. Hall which was of such a nature as to be a reasonable and expected basis for the creation of fear.

I also mentioned that the indictment charges that the defendant acted wilfully and knowingly. The charge, I remind you, is that on the 25th of January, on or about the 25th of January, the defendant took from someone else money and that he did so wilfully and knowingly.

An act is done wilfully if it is done voluntarily and intentionally and with intent to do something which the law forbids. In other words, he acted with bad purpose either to disobey or to disregard the law.

An act is done knowingly if done voluntarily, intentionally, and not because of mistake or accident or other innocent reasons.

As you can see, the purpose of requiring that it be done knowingly is to assure that no one can be convicted for an act done because of some innocent reason, some mistake, some accident.

Knowledge, intent, that is something that is in the

mind. We can't look into another person's mind. The only way you can arrive at a conclusion as to whether something was done with knowledge and intent is to take into consideration all the facts, all the circumstances, and determine whether the requisite knowledge and intent were present as a result of your examination of the surrounding facts and circumstances.

Knowledge and intent must be and may be inferred from all the surrounding circumstances, including the natural and probable consequences of a defendant's conduct and action.

You have heard a lot about beyond a reasonable doubt, the burden which the government has. The government's burden of proving the charges beyond a reasonable doubt extends to every element of the alleged crime. It is a burden which, as I told you, never shifts. It remains with the government throughout the trial.

A defendant is presumed to be innocent. This presumption continues throughout the trial. It continues right now. It continues in the defendant's favor when you retire to the jury room. This presumption is overcome only if and only when, if it happens, you find that the government has established its case beyond a reasonable doubt.

Now, what is a reasonable doubt? Well, it is just

about what you think it is. The words pretty well define what a reasonable doubt is. It is a doubt founded in reason. It is one which arises out of the evidence in the case, or the lack of evidence. It means a doubt which a reasonable person would have after carefully weighing all the evidence. It is a doubt which appeals to your reason, to your judgment, to your common sense, to your experience. It is not caprice, mere whim, mere speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If, after fairly and carefully and impartially considering all the evidence, you can candidly and honestly say to yourself that you are not satisfied of the guilt of the defendant, that you do not have an abiding conviction of the defendant's guilt which amounts to a moral certainty, if you have such a doubt as would cause each of you as a prudent person to hesitate before acting in matters of importance to yourself, then you have a reasonable doubt, and under those circumstances it is your duty to acquit.

On the other hand, if after such a fair and impartial consideration of all the evidence you can candidly and honestly say to yourself that you do have an abiding conviction of the defendant's guilt in this case, such a conviction as you would be willing to act upon in important

and weighty matters in your own personal affairs, then you have no reasonable doubt, and, under those circumstances, itis your duty to convict.

One final word on this. Reasonable doubt does not mean and it cannot mean a positive certainty, a 100 per cent certainty beyond all possible doubt. If that were the rule, few persons, however, guilty, would be convicted. It is practically impossible for a person to be absolutely and completely convinced of any disputed fact which by its nature is not susceptible of mathematical certainty. In consequence, the law in a criminal case is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, as I have explained it to you, not beyond all possible doubt.

The Constitution of the United States, the laws of the United States, provide that in any criminal matter the defendant is under no oblgiation to testify, or, indeed, to come forward with any evidence, since, as I have explained to you, the burden of proving a violation of law is solely and exclusively on the government.

Therefore, you must not consider in any way the fact that Mr. Hall, the defendant, has chosen not to testify in this case. That is his right, his right under the law, and you are not permitted to speculate on the reasons why he did

not testify. Nor may you draw any inference of any kind from his decision not to testify. This right is one which is shared by every defendant in every criminal trial in this country, and it may not be used against him as a substitute for or to supplement the evidence which is now before you.

There are two kinds of evidence, and you have had both kinds in this case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect evidence, more commonly referred to as circumstantial evidence, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct evidence and circumstantial evidence. Each is entitled to the same weight or lack of weight, depending upon the surrounding circumstances.

The law simply requires that the jury find the facts in accordance with all of the evidence, both the direct and the circumstantial evidence.

There is a very common experience which is customarily used in this courthouse to try to explain the difference between direct and circumstantial evidence, and today may be a particularly appropriate day to tell you about this example.

Let us assume that when you came into this court

this morning you could see that it was a nice day, the sun was shining. You had direct evidence that it was a nice day.

Now, let's assume that we are in this courtroom, and let's assume, also, that there are no windows in the courtroom, and just about now, a couple of hours after you came into the courtroom, a spectator comes into the room with a hat in his hand which is dripping wet. A few minutes later another spectator comes in with a raincoat and an umbrella, both of which are dripping wet. You don't personally know the weather has changed and that it is raining outside, but the circumstantial evidence is that it probably is raining outside, and you are entitled to infer from the circumstantial evidence -- the wet hat, the wet [illegible] the wet raincoat -- that it is in fact raining outside.

So, as I have said, the law recognizes no difference between direct evidence and circumstantial evidence.

You have heard evidence relating to a statement claimed to have been made by the defendant outside of this courtroom, and after the crime charged in the indictment was allegedly committed. This evidence should be considered with care and with caution. The evidence should not be considered by you, it should be disregarded, unless you are satisfied beyond a reasonable doubt that the statements were knowingly

made. And "knowingly," as I said before, means voluntarily and intentionally, not because of mistake or accident.

In determining whether any statement claimed to have been made by a defendant outside of court and after a crime has allegedly been committed, in determining whether that statement was knowingly made, you should consider all the circumstances -- the age, the training, the education, the occupation, the physical and mental condition of the defendant, his treatment while he was in custody or under interrogation, including among all the circumstances whether before the statement was made the defendant knew or had been told or understood that he was not obligated to make the statement claimed to have been made by him, that any statement that he might make could be used against him in court, that he was entitled to the assistance of counsel before making any statement, whether written or oral, and that if he was without money to retain counsel of his own choice an attorney would be appointed to advise him.

So, if you are convinced by the evidence in this case that any statement which the defendant was claimed to have made was not made voluntarily, you should disregard it.

On the other hand, if the evidence does indicate to you beyond a reasonable doubt that a statement was in fact voluntarily and intentionally made by the defendant,

you may consider it as evidence.

There has been testimony that the defendant made a statement on April 13, 1973, to the New York Police, tending to show that he bought the Smith & Wesson .38 caliber revolver, Serial No. D184306, which you have seen.

There has also been testimony tending to show that this statement was false. Exculpatory statements, when shown to be false, are circumstantial evidence of a guilty conscience, and may by itself have independent probative force.

There has also been testimony in this case from eye witnesses to the alleged crime, concerning the identity of the person who committed the crime. As with all other evidence, you may give as much weight to that testimony as you feel it deserves. As with all other evidence, you are the sole judges of the credibility of that evidence.

In assessing the weight to be given to that evidence, you may consider all the circumstances revealed by the evidence concerning the witnesses' observations of the crime as well as the circumstances revealed by the evidence concerning the witnesses' in-court identification testimony.

In addition, you may consider the following: It must be recognized that improper employment of photographs by the police may sometimes cause witnesses to err in identifying criminals. A witness may have obtained only a brief glimpse of a criminal or may have seen him under poor conditions. Even if the police subsequently follow the most correct photographic identification procedures and show him a number of individuals without indicating whom they suspect, there is some danger that the witness may make an incorrect identification.

This is so regardless of how any initial misidentification comes about. A witness thereafter is apt

to retain in his memory the image of the photograph rather than the person actually seen, reducing the trustworthiness of any subsequent courtroom identification.

So, identification testimony, like any other evidence, may be fallible. However, taking this possibility into account, it remains your sole province as jurors to assess the credibility of the eye witness testimony and to give it the weight that you believe it deserves under all the circumstances.

I mentioned credibility, the credibility of a witness. To determine the credibility of a witness, there are a number of obvious things you must take into account:

The circumstances under which a witness testified, the witness's intelligence, the witness's motive; did the witness have any motive to overstate the truth or to understate the truth; the witness's state of mind, the demeanor of the witness, any relation which the witness may have to either side of the case, any interest which the witness may have in the outcome of the case, the extent to which a witness is supported or contradicted by other evidence or other testimony.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of one witness and another, may or may not cause you to discredit the testimony.

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One or more persons witnessing an incident may see or hear it differently, as you know from your own experience.

An innocent misrecollection, like a failure of recollection, is not an uncommon experience. So, in weighing the effect of any discrepancy which you may have noticed, if you did, consider whether it pertains to a matter of importance or to some unimportant detail, and whether the discrepancy results from innocent error or wilful falsehood.

If you should find that any witness has testified to a particular point falsely, you have two choices -- you can either reject all of that witness's testimony on the ground that it is all tainted and not worthy of belief or, you can accept that part which you believe and reject that part which you don't believe.

You have also heard one expert witness. The general rule is that witnesses are permitted to testify only as to facts, and they are not supposed to express their opinions, but there is an exception to that. The opinion of a qualified expert is admissible and may be considered by you on a technical matter. The expert may testify as to his opinion on a subject concerning which he has special knowledge. This is permitted on the theory that the advice of one experienced and versed in technical subjects will help you in reaching your final determination.

You may consider the expert's qualifications and his opinion. You may weigh his reasons, if any, and give his testimony such weight as you feel it deserves.

Expert opinion, expert testimony, such as you heard, is purely advisory, advice to you, and you may reject it entirely if in your judgement you are not convinced by it.

If, on the other hand, you believe his testimony to be worthy of some weight or of considerable weight, that is entirely up to you.

You may, of course, not be influenced by the number of witnesses either side has called or by the number of exhibits received in evidence on one side as against the number by the other. It is the quality of the testimony and the other evidence which counts, not the quantity.

Now, you are about to retire and embark upon your most important function which you have to perform -- to decide whether or not the defendant is guilty or not guilty. You must remember your oath that you have taken as jurors in which you promised that you would well and truly try the issues in this case and render a true verdict. You must not allow emotion, fear, prejudice, bias, sympathy, to interfere with your calm deliberation.

The just determination of this case is important to the government, it is important to the defendant, it is

important to everybody.

You must decide the case solely in accordance with the evidence, the facts as you find them, and the law I have given to you.

If the government has failed to prove beyond a reasonable doubt each and every element of the offense charged, your sworn duty is to bring in a verdict of not guilty. But if the government has carried its burden of proving beyond a reasonable doubt each and every element of the offense charged, your sworn duty is to bring in a verdict of guilty.

Under your oath, you cannot allow a consideration of punishment which may be inflicted upon the defendant, if convicted, to influence your verdict in any way. The duty of imposing sentence rests entirely with the Court. Your function, your duty, is to decide the case upon the evidence, and you must not be influenced by any assumption, any conjecture or sympathy.

Your verdict must represent the considered judgement of each juror, of all twelve of you. Your verdict, whether guilty or not guilty, must be unanimous.

Now, you will have the opportunity to consult with each other, to talk about the case, to deliberate about it, with a view towards reaching an agreement.

You should listen to all of the arguments of your fellow jurors, each of you, but you must not surrender your conscientious convictions solely because of the opinions of your fellow jurors or because you are outnumbered.

Each of you must decide this case for yourself. But you should do so only after impartial consideration of the evidence and deliberation with your fellow jurors.

In the course of your deliberations, don't hesitate to reexamine your views or to change your opinion if you are honestly convinced that your initial opinion was wrong but don't surrender your own honest conviction as to the weight, the effect of the evidence, solely because of the opinion of your fellow jurors.

As I indicated earlier this morning, if any of you have any questions that you want to put to me, if you want to see any of the evidence, any of the documents, if you want to see the indictment, if you want to hear any of the testimony, to have it read back to you, send me a note through Mrs. Martello and we will do what we can for you.

If you reach a point in your deliberations where you think that you are deadlocked -- that is, there are so-many people for one view and so-many people for another view -- and you don't think that it can be resolved and you

want to tell me this -- Mrs. Martello, you, may do so -- but don't tell me what the vote is.

If you have reached a deadlock, just send me a note in your own words to that effect but don't tell me that the vote is such and such for one side and such and such for the other side; just tell me that you think you are hopelessly deadlocked.

We will take a very short recess, during which I want to consult with the lawyers to make sure I haven't left anything out or misstated myself, and then I will bring you back and send you all to begin your deliberations.

We will take a few minutes and, ladies and gentlemen, the time has not yet come when you can start talking about the case among yourselves.

(Recess.)

(In the robing room.)

THE COURT: Yes?

MR. BERMAN: With regard to the charge, I again except to all of that portion about intimidation. There must have been a good page or two on intimidation and I don't think that was really an issue in this case. The defense was that it was someone else who did it, that it was not Mr. Hall, and we certainly, in summation, said nothing about intimidation or that there was no evidence or intimidation.

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I take it there is nothing else.

MR. BERMAN: No, your Honor.

MR. SCHATTEN: Thank you, your Honor.

THE COURT: All right.

(In open court; jury present)

THE COURT: Ladies and gentlemen, counsel have asked me to review with you two or three points, just to make sure that they are clear in your minds.

As I indicated, there is a presumption of innocence in favor of the defendant. As I also indicated, you may not take into account the fact that the defendant chose not to testify. That is his right. The defendant does not have to prove his innocence. On the other hand, the Government has to prove his guilt beyond a reasonable doubt. With respect to the phrase "a reasonable doubt," you will recall what I said about that.

One further point. The reason, if you have a reasonable doubt, underlying your reasonable doubt need not be a fully formulated one, an articulated one, or even one communicable to one of your co-jurors. If you have a doubt, a reasonable doubt, as I have defined it, then of course you must acquit.

Finally, I referred to what I called an exculpatory statement by the defendant with respect to the gun. As I

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indicated, there was testimony tending to show that the defendant's statement was false. I also said that an exculpatory statement when shown to be false is circumstantial evidence of a guilty conscience and may have independent probative force.

Of course, you don't reach that point unless you have first found that the statement was false. In other words, you must find that any statement made by the defendant in this connection was a false statement, and of course you must find beyond a reasonable doubt that it was a false statement. Only then may you take into account the further circumstance which I have indicated, that an exculpatory statement when shown to be false, which means when you have determined that it was false beyond a reasonable doubt, then you may take it into account and only then as circumstantial evidence of a guilty conscience.

Gentlemen, anything else?

MR. BERMAN: Nothing, your Honor.

MR. SCHATTEN: No, nothing, your Honor.

THE COURT: Ladies and gentlemen, you may now retire and begin your deliberations.

Mr. Dorner, Mr. Conte, we thank you very much for participating with us. It now develops we don't need you any longer. Thank you for your attention, and you are

MATTEAWAN HOSPITAL CLINICAL SUMMARY

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FORM 124 MED. (3 67)

STATE OF NEW YORK - DEPARTMENT OF MENTAL HYGIENE

CLINICAL SUMMARY

MATTEAWAN STATE HOSPITAL

(NAME OF INSTITUTION)

RGH/rek

NAME:	IDENT. NO.:	HOSPITAL NO.:
HALL, MORRIS	120/28/77	1[illegible]

SEX:	AGE AT ADMISSION:	CITIZENSHIP:	DATE OF ADMISSION:
M ☒ F ☐	27	U.S.A. ☒ Resident Alien ☐ Non-Resident ☐	12/10/71

MARITAL STATUS:	DATE OF SUMMARY:
Single ☒ Married ☐ Widowed ☐ Divorced ☐ Separated ☐	12/31/71

NAME AND ADDRESS OF NEAREST RELATIVE:	DIAGNOSIS:

This 27 year old Black male was admitted to Matteawan State Hospital on 12/10/71 from Green Haven Correctional Facility on a Forthwith Order of Commitment, dated December 10, 1971, signed by the Hon. Joseph Gaglardi, under Section 408. His full term will expire on 11/6/72. Information for this summary was obtained from the commitment papers, psychological report from Green Haven Correctional Facility, dated 10/3/71 and several interviews with the patient.

FAMILY HISTORY: No history of mental diseases are revealed.

PREVIOUS HOSPITALIZATIONS: Previous hospitalizations were denied.

PERSONAL HISTORY: Patient was born 5/25/44 in Montgomery, Ala. He dropped out of school in the 9th grade because he was failing. States that his father is retired because of occupational injuries. Patient claims he has been a baker's helper prior to admission to jail, three years ago. Denies use of drugs or alcohol. Psychiatric examination, dated December 3, 1971, from Green Haven Correctional Facility revealed, "This inmate has shown progressive deterioration of his behavior and mental condition over the past eight months to the point where he is psychotic, dangerous to himself and others and no longer suitable for treatment at this institution. He has a long history of crimes of assault. Diagnosis: Paranoid Schizophrenia. Recommendation: Commitment to Dannemora State Hospital?

CRIMINAL RECORD: IIS has not yet been received but he was received at Sing Sing Prison on 2/27/69 & was sentenced to Maximum term of four years for crimes of Attemp. Bur. 2. (Indictment No. 5561/68) which was committed on or about 11/11/68 on which he was "convicted by confession".

OPINION OF EXAMINING PHYSICIANS: Dr. Max Dahl and Dr. Gilbert Levy report that he was "Very talkative

and circumstantial-when interrupted threatens to "walk out". Complains about being treated unfairly, admits unruly and uncooperative and threatening behavior. "I told them off", feels that he is justified in behaving this way. Admits short temper. "I have no patience with stupidity". I s evasive and as interview progresses, becomes loud and angry. Shows extremely poor judgment. Wants to have his own way all the time. Prefers to be in solitary confinement to being in population or hospital."

CLASSIFICATION TO MATTEAWAN: On admission he had multiple physical complaints for which no organic basis was evident. He shows handwritten Writ of Habeas Corpus, Addressed to the U.S. District Court, 4th Judicial in which he has notarized and approved for forwarding to the court. In this he purports to have been illegally transferred to Matteawan State Hospital. He was circumstantial and insisted that he doesn't need mental treatment. He complained "I have been in solitary confinement in this cell (in Green Haven) because I refused to stand up for count. He is very loquacious, claims special knowlege of the law, displays paranoid ideas, claiming that he has been discriminated against but doesn't state how these discrimination apply to him. Denies alligations in commitment papers and denied he ever caused any trouble in Green Haven, except that on 12/5/71 he did throw water on a physician and another time threw coffee on the officers there. He denies psychosis or mental illness or emotional instability, but does admit that "I got a quick temper". He had no insight and no sense of responsibility for his acts for which he excuses as "Due to acting in a irrational manner".

PHYSICAL SYMPTOM COMPLEX: This is a strong, well developed, black male. He has multiple physical complaints, including headaches, stomach trouble and blurred vision for which no significant organic basis is evident during this physical examination. B.P. 124/72. Pulse 88 and regular. Heart and lungs are clear. Abdomen has no scars and there is no evidence of tenderness rigidity or pain. Vision is 20/20.

SUBSEQUENT HISTORY: Patient was placed on Mellaril 50 mgs. BID, which he refused at times. His paranoid trends regarding the authorities at Green Haven Corr. Facility and psychiatrists persist and he eventually admitted that he becomes angry. At Matt. St. Hospital he shows that he is an individual of at least average normal intelligence, a person who is anxious and tense, insecure in his environment.

MENTAL SYMPTOM COMPLEX: This 27 year old male has been in prison for about three years where he has been in solitary because of hostile and aggressive rebellious and litigious acting out behavior. He finds difficulty in coping with the environment. He was unable or unwilling to discuss his crime but admitted he confessed attempted robbery.

MENTAL STATUS DIAGNOSIS: Shows paranoid ideation , antisocial behavior. Diagnosis offered: 299.00- Unspecified Psychosis- 301.7- Personality Disorder, Antisocial.

DISPOSITION: December 23, 1971: Presented in diagnostic staff. Diagnosis established as offered as: 299.00- Unspecified Psychosis and 301.7- Personality Disorder, Antisocial.

FORM 124 MED. (J 67)

STATE OF NEW YORK - DEPARTMENT OF MENTAL HYGIENE

CLINICAL SUMMARY

MATTEAWAN STATE HOSPITAL

(NAME OF INSTITUTION)

NAME:	IDENT. NO.:	HOSPITAL NO.:
HALL, MORRIS	120-28-77	14,519

SEX:	AGE AT ADMISSION:	CITIZENSHIP:	DATE OF ADMISSION:
M ☒ F ☐	27	U.S.A. ☒ Resident Alien ☐ Non-Resident ☐	12/10/71

MARITAL STATUS:	DATE OF SUMMARY:
Single ☒ Married ☐ Widowed ☐ Divorced ☐ Separated ☐	12/31/71

NAME AND ADDRESS OF NEAREST RELATIVE:	DIAGNOSIS:

FEBRUARY 8, 1972: Patient was today discharged from this hospital and returned to Green Haven Correctional Facility to serve the remainder of his sentence which expires on November 8, 1972.

FINAL DIAGNOSIS: 299.00 Unspecified Psychosis and 301.7 Personality Disorder, Antisocial.

CONDITION ON DISCHARGE: Recovered from Psychotic Episode.

Copy submitted
Catherine A Crawford
Matteawan State Hospital
1/29/74